

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

CONTINENTAL 332 FUND, LLC,
CONTINENTAL 298 FUND LLC,
CONTINENTAL 306 FUND LLC,
CONTINENTAL 326 FUND LLC,
CONTINENTAL 347 FUND LLC,
CONTINENTAL 355 FUND LLC,
CONTINENTAL 342 FUND LLC,
CONTINENTAL 245 FUND LLC and
KMM CONSTRUCTION OF FLORIDA,
LLC,

Plaintiffs,

v.

Case No.: 2:17-cv-41-FtM-38MRM

DAVID ALBERTELLI, ALBERTELLI
CONSTRUCTION INC.,
WESTCORE CONSTRUCTION,
LLC, NATIONAL FRAMING, LLC,
MFDC, LLC, TEAM CCR, LLC,
BROOK KOZLOWSKI, JOHN
SALAT, KEVIN BURKE, KERRY
HELTZEL, AMY BUTLER, US
CONSTRUCTION TRUST,
FOUNDATION MANAGEMENT,
LLC, KMM CONSTRUCTION, LLC,
GEORGE ALBERTELLI, GREGORY
HILZ, and GREAT AMERICAN
INSURANCE COMPANY,

Defendants.

OPINION AND ORDER¹

Before the Court are Plaintiffs' Request for Dismissal without Prejudice of Defendant Kerry Heltzel ([Doc. 530](#)) and the Joint Request for Dismissal with Prejudice of

¹ Disclaimer: Documents hyperlinked to CM/ECF are subject to PACER fees. By using hyperlinks, the Court does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide, nor does it have any agreements with them. The Court is also not responsible for a hyperlink's availability and functionality, and a failed hyperlink does not affect this Order.

Certain Pleadings and Claims ([Doc. 572](#)). [Federal Rule of Civil Procedure 41\(a\)\(2\)](#) allows plaintiffs to request dismissal of actions by court order, on terms that the Court considers proper. Here, Plaintiffs and most of the defendants have settled their claims and wish to dismiss them. The Court ordered any party who objects to the requests to raise such objections, in writing, on or before January 24, 2020. ([Doc. 573](#)). No one objected to the requested dismissals.²

Accordingly, it is now

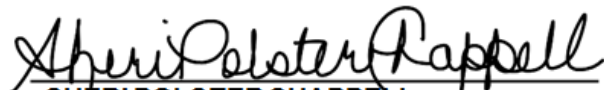
ORDERED:

- (1) Plaintiffs' Request for Dismissal without Prejudice of Defendant Kerry Heltzel ([Doc. 530](#)) is **GRANTED**. Plaintiffs' claims against Heltzel set out in the Fourth Amended Complaint ([Doc. 218](#)) are **DISMISSED without prejudice**.
- (2) The Joint Request for Dismissal with Prejudice of Certain Pleadings and Claims ([Doc. 572](#)) is **GRANTED**.
 - a. Plaintiffs' claims against David Albertelli, George Albertelli, Amy Butler, Albertelli Construction, Inc., Westcore Construction, LLC (Del.), Westcore Construction, L.L.C. (Nev.), Foundation Management, LLC, National Framing, LLC, U.S. Construction Trust, MFDC, LLC, Team CCR, LLC, and KMM Construction, LLC set out in the Fourth Amended Complaint ([Doc. 218](#)) are **DISMISSED with prejudice**.
 - b. National Framing, LLC's Amended Counterclaim ([Doc. 247](#)) is **DISMISSED with prejudice**.

² Gregory Hilz filed the only response, taking issue with the parties' representation in [Doc. 572-1](#) that he is named in Counts 1-3 and 5-6 of the Fourth Amended Complaint. The Court notes Hilz's objection and will address it in a future order.

- c. Westcore Construction, LLC's Amended Counterclaim ([Doc. 246](#)) is **DISMISSED with prejudice.**
 - d. KMM Construction, LLC's Amended Counterclaim ([Doc. 245](#)) is **DISMISSED with prejudice.**
 - e. Albertelli Construction, Inc.'s Fifth Amended Counterclaim and Third-Party Complaint ([Doc. 370](#)) is **DISMISSED with prejudice.**
 - f. Continental Properties Company, Inc.'s Counterclaim ([Doc. 381](#)) is **DISMISSED with prejudice.**
- (3) The Clerk is **DIRECTED** to enter judgment on the above-listed claims and to terminate the following parties: David Albertelli, George Albertelli, Amy Butler, Albertelli Construction, Inc., Westcore Construction, LLC (Del.), Westcore Construction, L.L.C. (Nev.), Foundation Management, LLC, National Framing, LLC, U.S. Construction Trust, MFDC, LLC, Team CCR, LLC, KMM Construction, LLC, Continental Properties Company, Inc., and Kerry Heltzel.
- (4) Counsel for Kerry Heltzel is no longer required to attend the telephonic status conference set for January 28, 2020.

DONE and **ORDERED** in Fort Myers, Florida this 27th day of January, 2020.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record